

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

C. AND C.S., FOR THEIR MINOR DAUGHTER H.S.	§	
Plaintiffs	§	
	§	
v.	§	C.A. NO. 1:09-cv-374
	§	
SILSBEE INDEP. SCH. DIST.,	§	
SUP'T. RICHARD BAIN, JR.,	§	
PRIN. GAYE LOKEY, SISSY	§	
McINNIS, DAVID SHEFFIELD,	§	
CHRISTIAN ROUNTREE, and	§	
RAKHEEM BOLTON	§	
Defendants.	§	

SECOND RESTATED MOTION FOR ATTORNEY FEES AND COSTS

1. By Order signed on October 7, 2009, the Court granted the motions to dismiss, with prejudice, of Defendants David Sheffield; Silsbee ISD and Richard Bain, Jr.; Gaye Lokey and Sissy McInnis; and declined to exercise supplemental jurisdiction over Plaintiff H.S.' state law claims against Defendants Bolton and Rountree.

2. Previously, on August 7, 2009, Defendants SISD and Bain had filed their Restated Motion for Attorney Fees and Costs, with proposed Order. The restated motion accompanied the filing of these Defendants' Amended Motion to Dismiss.

3. Authority for granting prevailing Defendants attorney fees and costs is set out in 42 U.S.C. § 1988, in that Plaintiffs' original and first amended complaints have now been determined to be frivolous, unreasonable, and without foundation or merit. *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412, 422 (1978); *accord: Hughes v. Rowe*, 449 U.S. 5 (1980). See also *Canady v. Bossier Parish School Board*, 240 F.3d 437 (5th Cir., 2001).

4. Attached hereto and incorporated by reference is these Defendants' affidavit for attorney fees and costs.

WHEREFORE, PREMISES CONSIDERED, Defendants SISD and Bain pray that, based on the Court's findings and conclusions in its Order signed October 7, 2009, in which Defendants SISD and Bain were determined to have prevailed, and that Plaintiffs' claims against these Defendants are frivolous, unreasonable, and without foundation or merit, that they and each of them be awarded reasonable attorney fees and costs of court from these Plaintiffs in the amounts indicated in the attached affidavit.

Respectfully submitted,

WELLS, PEYTON, GREENBERG
& HUNT, L.L.P.

/s/ Tanner T. Hunt, Jr.

By: _____

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DISTRICT AND RICHARD BAIN, JR.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2009, this document was electronically filed with the Clerk of the Court of the U.S. District Court, Eastern District of Texas, using the electronic filing system of the Court. The electronic filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice by electronic means, in compliance with Local Rule CV-5(a) of the U.S. District Court of the Eastern District of Texas.

/s/ Tanner T. Hunt, Jr.

Tanner T. Hunt, Jr.